HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.23549 of 2006

Date : 11-12-2006

Between:

T.Ramakrishna Rao ..
Petitioner

And

Municipal Corporation of Hyderabad
rep. by its Commissioner and another ..
Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.23549 of 2006

ORDER:

1. Heard Sri V.N.M. Chary, Counsel representing the petitioner and Ms.Jyothi Kiran, the learned Standing Counsel representing the respondents.

2. This Court ordered notice before admission on 13-11-2006 and directed status quo to be maintained for a limited period and subsequent thereto extended for a further limited period. Counter affidavit is filed by respondents 1 and 2.

3. The Writ Petition is filed for a writ of mandamus or any other writ or order declaring the action of the respondents in interfering with the peaceful possession of the petitioner's flat No.G2 in M/s.Badam Apartments, situate at premises bearing H.No.6-3-805, Somajiguda, Hyderabad as being illegal, arbitrary, unconstitutional and contrary to

the provisions of the Hyderabad Municipal Corporation Act 1955 and in violation of the principles of natural justice and consequently direct the respondents not to interfere with the rights of the petitioner's property in any manner and to pass such other suitable orders.

4. It is stated that the petitioner is the absolute owner of Flat GF2 on the ground floor of Badam Apartments bearing H.No.6-3-805, Somajiguda, Hyderabad having purchased the same under a registered sale deed dated 16-2-1987. It is further stated that in the yr 1981 the builder of the petitioner's apartment proposing to construct an apartment in the property approached the 1st respondent and obtained permission for ground plus four upper floors vide permit No.120/42, dated 12-3-1981 under File No.37/TP/A3/81. It is also stated that after obtaining permission, the builder constructed the apartment within three years and sold to various persons including the petitioner. The construction of the petitioner's apartment was completed before 1984 within the stipulated time of the respondents. After completion of the construction the purchasers of the flats including the petitioner have been residing in the apartment since then. It is further stated that the petitioner was surprised to receive a notice dated 13-10-2006 from the respondents under Section 452 of the Hyderabad Municipal Corporation Act 1955 and the petitioner was informed that the petitioner's flat is an unauthorized one constructed against the sanctioned plan

vide permit No.120/42 dated 12-3-1981. Thereafter a notice under Se4ction 636 of the Act was issued on 30-10-2006 directing the petitioner to remove/demolish the petitioner's flat within 24 hours. It is also further stated that immediately the next day the petitioner gave a reply stating that the petitioner's apartment was constructed more than 20 years back and the constructions made prior to 1985 are deemed to be regularized. Further it is stated that taking this into consideration the Government of Andhra Pradesh issued G.O.Ms.No.419 of 1998 for the constructions made after 1985 for regularization. Bringing all the facts before the respondents with the said reply the petitioner requested the respondents to resort to the demolition action. Further it is stated that on 9-11-2006 the officials of the respondents visited the petitioner's premises late in the evening for demolition of petitioner's property but with great difficulty with the assistance of neighbours the petitioner could resist the respondents from demolishing the petitioner's property. Further it is stated that almost everyday the threat is being repeated. Several other details also were narrated in relation to G.O.Ms.No.490 dated 31-7-1998 and other factual details.

5. In the counter affidavit filed by respondents 1 and 2 it is stated that the respondents-Corporation had granted building permission for the proposed construction of ground floor for parking plus four upper floors for residential

flats at premises No.6-3-905, vide permit No.120/42, dated 12-3-1981 in file No.37/TP/A3/81 in favour of Badam Apartment. Three flats were constructed in the ground floor meant for parking, unauthorisedly, which resulted in short fall in the parking space. It is also further stated that due to the unauthorized conversion of parking space into other purposes in the local area of the respondents-Corporation in most of the buildings the vehicles are forced to park on the roads, resulting in traffic problems. Therefore the respondents-Corporation is taking up to clear these unauthorized structures in the parking areas and restore the parking spaces of the apartments. Even this Court also on many occasions passed orders to restore the parking spaces especially in C.C.No.101/96 dated 28-2-1996 and in W.A.No.3140/2006 to ensure free flow of traffic. Further, in the instant case the flat owners Association is making representations and objecting for the conversion of parking space into flats. Therefore the respondents-Corporation has initiated action to restore parking space provided as per the sanctioned plan. The respondents-Corporation had provided due opportunity by issuing notice under Section 452 of the Hyderabad Municipal Corporations Act on 13-10-2006 calling upon the petitioner to submit explanation. The final notice under Section 636 of the Act was also issued on 30-10-2006. It is also further stated that the petitioner had submitted explanation to the notice served by the respondents-Corporation explaining that the building was

constructed long back and it is deemed to have been regularized under G.O.Ms.No.419, M.A., dated 30-7-1998. The explanation submitted by the petitioner was not satisfactory as the petitioner never applied for any regularization of the structures either in pursuance of G.O.Ms.No.419, dated 30-7-1998 or any other G.Os. prior to issuance of G.O.Ms.No.419 for regularization of unauthorized structures. Even as per G.O.Ms.No.419, dated 30-7-1998 the structures made in the parking spaces reserved as per sanctioned plan are unauthorized and cannot be regularized. Such structures are liable to be demolished. Therefore the action taken by the respondents-Corporation against the petitioner is perfectly valid and justified. There is no specific time or period from the date of sanctioned plan to take up the action for demolition of illegal and unauthorized structures. As per the provisions of Sections 452 and 636 of the Hyderabad Municipal Corporations Act 1955 the respondents-Corporation can take action at any point oftime by following the procedure contemplated under Sections 452 and 636 of the aforesaid Act.

6. In the light of the respective stands taken by the parties and also in view of the G.Os. referred to supra, taking into consideration the fact that the apartment in question was constructed and the purchase was made long back, this Court is of the considered opinion that the impugned notice dated 30-10-2006 is liable to be set aside

and the same is hereby set aside and the matter is remitted to the 2nd respondent to reconsider the whole issue in the light of the elaborate grounds or reasons raised in this regard by the writ petitioner.

7. Accordingly the Writ Petition is allowed to the extent indicated above. No costs.

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Justice P.S. Narayana

Date : 11-12-2006

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